

March 20, 1996

OFFICE OF THE HEARING EXAMINER
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REPORT AND DECISION ON AN APPEAL FROM THRESHOLD DETERMINATION.

SUBJECT: King County Facilities Management Division,
Department of Construction and Facilities Management File No. S95-31611

BIG FINN HILL PARK
PHASE IV
SEPA Appeal

Location: Along the north and south sides of that segment of NE 138th Street (vacated as street right-of-way/not physically removed) which crosses the park between Juanita Drive NE & Henry David Thoreau Elementary School (located on 84th Avenue NE)

Proponent: King County Dept. of Construction & Facilities Management
500 Fourth Avenue, Room 320, Seattle, WA 98104-2337

Appellant: David A. Rodgers, 8121 NE 141st Street, Bothell, WA 98011-5324

PRELIMINARY REPORT:

The Department's Report on the above-referenced appeal was received by the Examiner on March 6, 1996.

PUBLIC HEARING:

After reviewing the Report of the Facilities Management Division, examining available information on file with the application and visiting the property and surrounding area, the Examiner conducted a public hearing on the appeal as follows:

The appeal hearing on Item No. S95-31611 was opened by the Examiner at 1:35 p.m., March 11, 1996, in Room No. 2, Department of Development and Environmental Services, 3600 - 136th Place S.E., Suite A, Bellevue, Washington, and adjourned at 4:45 p.m. The hearing continued at 11:00 a.m., March 12, 1996, and closed at 1:50 p.m. Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. The project proponent is the Facilities Management Division of the King County Department of Construction and Facilities Management. On December 29, 1995, the Department, assuming lead agency status for SEPA review of the proposed Phase IV park development, issued a Determination of Non-Significance (DNS).
2. On January 12, 1996, David Rodgers filed appeal from the lead agency's threshold determination, representing himself, Patricia Rodgers, Julie Rodgers, and Duke Phan. Those portions of the appeal ruled relevant to a SEPA threshold determination appeal review focused on these areas of concern:
 - A. The impact of N.E. 138th Street closure upon neighborhood traffic circulation;
 - B. The impact of new parking lot development upon N.E. 141st Street usage;

- C. Adequacy of the public participation/planning process;
- D. Adequacy of long-range planning (related to the WAC requirement for either cumulative impact review or acknowledged phased review);
- E. Adequacy of landscape buffers;
- F. Adequacy of study preparatory to stream classification;
- G. Adequacy of replacement wetland mitigation;
- H. Adequacy of erosion control measures; and
- I. Adequacy of park maintenance through the long term.

The appeal originally expressed concern regarding the impact of night lighting. Parking area lighting will cease 30 minutes following park closure at dusk. No lights will be provided for sports fields. For these reasons, Mr. Rodgers withdrew that portion of the appeal related to light and glare impacts.

In addition, Appellant Rodgers withdrew that portion of the appeal related to public notice requirements upon substantiation by the Department that the public notice procedures followed by the Department fully comply with the public notice and comment requirements established by WAC 197-11-340(A) and -502(3)(B), adopted by KCC 20.44.040.A.

3. The following findings are relevant:

- A. The impact of closing N.E. 138th Street was reviewed at the time the street right-of-way was vacated, substantially prior to the instant case. At that time, N.E. 138th Street closure was determined to result in minor neighborhood traffic circulation impacts. The record contains no evidence that changes in area traffic patterns associated with street closure would produce significant reductions in the level of service (LOS) in the vicinity of the park. The park development proposal has been reviewed by King County Traffic and Planning. However, no significant adverse impacts have been identified through that review or in any evidence presented in this hearing.
- B. The Appellant has presented no evidence in this hearing which would suggest that required and planned buffers will not be created appropriately or that they will lack appropriate vegetation or maintenance.
- C. The hearing record contains no evidence to support any assertion that groundwater recharge and discharge in the vicinity of the streams upon the subject property will be adversely impacted to a significant degree. The proposed development is designed to comply with both the King County Surface Water Design Manual and the Northshore Critical Drainage Criteria. This will result in stormwater release rates below the pre-development rate. This result applies not only to proposed impervious surfaces but also to the finished system retrofit for N.E. 138th Street.
- D. The hearing record contains no evidence that the minor Class 3 wetland to be filled will not be properly mitigated on-site. The probable mitigation will provide additional vegetative shade along an on-site stream.
- E. The Department proposes to control erosion, temporarily and permanently, consistent with KCC 16.82. The hearing record contains no definitive evidence that any native habitat and species will be significantly adversely impacted. It may be noted by review of the Master Plan that substantial portions of the park will remain undeveloped as natural habitat.
- F. Although there have been some failures among recent park plantings, the preponderance of evidence in this hearing record does not substantiate any contention that current maintenance practices at the park constitute a significant adverse impact upon the environment.

4. The preponderance of evidence in this hearing record supports the assertions of fact contained in the Department's Report to the Hearing Examiner (Exhibit No. 1). Therefore that Report is adopted and incorporated here by this reference.

5. The following review standards apply:

- A. WAC 197-11-350(1), -330(1)(c), and -660(1)(3). Each authorize the lead agency (in this case, the Environmental Division), when making threshold determinations, to consider mitigating measures that the agency or applicant will implement or mitigating measures which other

agencies (whether local, state or federal) would require and enforce for mitigation of an identified significant impact.

- B. RCW 43.21C.075(3)(d) and KCC 20.44.120 each require that the decision of the Responsible Official shall be entitled to "substantial weight". Having reviewed this "substantial weight" rule, the Washington Supreme Court in Norway Hill Preservation Association v. King County, 87 Wn 2d 267 (1976), determined that the standard of review of any agency "negative threshold determination" is whether the action is "clearly erroneous". Consequently, the administrative decision should be modified or reversed if it is:

...clearly erroneous in view of the entire record as submitted and the public policy contained in the act of the legislature authorizing the decision or order.

CONCLUSIONS:

1. As noted in Finding No. 5.B, above, the burden of proof falls on the Appellant in a threshold determination appeal. Considering the preponderance of the evidence, the Appellant has not successfully borne that burden in this case. Considering the above findings of fact and the entire hearing record, it must be concluded that the Division's threshold determination in this matter is not clearly erroneous and therefore cannot be reversed.

The presentation of issues, questions and concerns is not sufficient to overturn a threshold determination. Rather, the determination (and the appeal review of that determination) must be based upon the preponderance of the evidence. The preponderance of the evidence in this case supports the Division's determination.

2. The issues raised by the Appellant are valid reasons for concern. However, they do not approach the magnitude requisite for a Determination of Significance.
3. In addition, the following conclusions apply:
- A. There is no indication in the record that the Division erred in its procedures as it came to its threshold declaration of non-significance. Rather, the Appellant differs with the Division's assessment of impacts or the probability of potentially adverse impacts. Speculation with respect to potential impacts cannot prove a probable significant impact that requires the responsible agency to be overruled or to alter its initial determination.
- B. Although the Appellant argues that the information on which the Division based its determination was insufficient, there is no adequate demonstration that the information on which the Division based its determination is actually erroneous.
- C. There is a substantial amount of information in the record regarding the various impacts which have been asserted by the Appellant. The Division has not been unaware of these issues and has investigated (and reinvestigated) them, but has arrived at conclusions which differ from the Appellant's. The Division, having had access to the variety of issues and points of view and information expressed by the Appellant and others, maintains its original determination of non-significance. The Division's judgement in this case must be given substantial weight.
- D. In view of the entire record as submitted and in view of the State Environmental Policy Act, the Division's decision is not clearly erroneous and is supported by the evidence.

DECISION:

DENY the appeal of DAVID A. RODGERS. The Determination of Non-Significance dated December 29, 1995 is affirmed.

ORDERED this 20th day of March, 1996.

R. S. Titus, Deputy
King County Hearing Examiner

TRANSMITTED this 20th day of March, 1996, to the following parties and interested persons:

S9531611/Big Finn Hill

Roy Abbett P.O. Box 474 Kirkland, WA 98083	Dixie Johanson Dixie Johanson Consulting 2326 NW Blue Ridge Drive Seattle, WA 98177	Susanne Rakel 14239 - 93rd Avenue NE Bothell, WA 98011
John Chaput 13420 - 79th Place NE Kirkland, WA 98034	John Lake 9120 NE 143rd Place Bothell, WA 98011	David A. Rodgers 8121 NE 141st Street Bothell, WA 98011-5324
Dana Clark 7047 NE 138th Avenue Kirkland, WA 98034	Scott Luchessa Shapiro & Associates, Inc. 1202 Third Avenue #1700 Seattle, WA 98101	Julian Sayers The Sayers Associates, Inc. 1133 - 37th Avenue Seattle, WA 98122
Jeff Girvin The Berger Partnership 2021 Minor Avenue East Seattle, WA 98102	Peter Luhrs 14018 - 80th Avenue NE Bothell, WA 98011	Denise Simpson Simpson Lighting Design 18405 Aurora Ave. North #H-42 Seattle, WA 98133
Sue Gruhn 14253 - 92nd Place NE Bothell, WA 98011-5149	Gary A. Norris William Popp Associates 225 - 108th Avenue NE, #314 Bellevue, WA 98004	Ray Wheller 13433 - 78th Place NE Kirkland, WA 98034
Diane Hertzberg 14252 - 75th Avenue NE Bothell, WA 98011	Tom/Jackie Pendergrass 13410 - 98th Avenue NE Kirkland, WA 98034	Jennifer Parker Dept. Constr.& Facilities Man. 421 Nicholson Place NW Bainbridge Island, WA 98110
Jack J. Hurley Rose Water Engineering, Inc 101 Stewart Street #407 Seattle, WA 98101-1048	Steve Pillitu 7850 NE 140th Place Bothell, WA 98011	
Linda Dougherty, King County Parks Division Bud Parker, King County Facilities Management Division Mike Rice, King County Facilities Management Division		

MINUTES OF THE MARCH 11, 1996 AND MARCH 12, 1996 PUBLIC HEARING ON KING COUNTY DEPARTMENT OF CONSTRUCTION AND FACILITIES MANAGEMENT, FACILITIES MANAGEMENT DIVISION FILE NO. S95-31611 - BIG FINN HILL PARK, PHASE IV, SEPA APPEAL:

R.S. Titus was the Hearing Examiner in this matter. Participating in the hearing were Jeff Girvin, Jack J. Hurley, Dixie Johanson, Scott Luchessa, Gary A. Norris, Jennifer Parker, Mike Rice, David Rodgers, and Julian Sayers.

The following exhibits were offered and entered into the record on March 11, 1996:

- Exhibit No. 1 King County Department of Construction and Facilities Management, Facilities Management Division Staff Report prepared for the March 11, 1996 Big Finn Hill Park Phase IV hearing, with attachments:
 - Attachment A: Copy of determination of non-significance
 - Attachment B: Copy of appeal statement of David Rodgers
 - Attachment C: Copy of applicable statutes/ codes
 - Attachment D: Copy of motion No. 9409
 - Attachment E: Copy of ordinance No. 11617 (pages 1 & 2, 29 & 30)
 - Attachment F: Copy of certificate of transportation concurrency
 - Attachment G: Copy of ordinance No. 11408
 - Attachment H: Sensitive area map No. 2/erosion hazard area
 - Attachment I: Vicinity map
- Exhibit No. 2 Copy of King County Council Ordinance No. 11408, dated July 11, 1994, vacating the portion of NE 138th Street lying within Big Finn Hill Park
- Exhibit No. 3 Copy of King County Parks and Recreation Division and King County Facility Management Division, Big Finn Hill Park Revised Master Plan, dated August 1, 1994
- Exhibit No. 4 Copy of King County Council Motion No. 9409, dated October 24, 1994, approving Revised Master Plan
- Exhibit No. 5 Summary of community involvement in planning Big Finn Hill Park
- Exhibit No. 6 Copy of Herrera Environmental Consultants, Big Finn Hill Park - Preliminary Stream and Wetland Classifications, dated August 2, 1992
- Exhibit No. 7 Copy of Shapiro & Associates, Inc., Jurisdictional Wetland Determination - Big Finn Hill Park, dated May 1995
- Exhibit No. 8 Copy of Shapiro & Associates, Inc., area calculations of wetland W3, dated August 25, 1995

- Exhibit No. 9 King County Sensitive Areas Map Folio, erosion hazard areas map No. 2 (highlighted to identify Big Finn Hill Park Phase IV), dated December 1990
- Exhibit No. 10 The Berger Partnership site plan - Big Finn Hill Park Phase IV, dated December 20, 1995
- Exhibit No. 11 SEPA notice documents: notices and affidavits of publication with posting locations
- Exhibit No. 12 Rose Water Engineering, Inc., surface water technical information report - Big Finn Hill Park Phase IV, dated December 1995
- Exhibit No. 13 William Popp Associates, parking and intersection analysis - Big Finn Hill Park Phase IV, dated October 10, 1995
- Exhibit No. 14 Copy of King County Council Ordinance No. 11617, dated December 20, 1994, establishing transportation programs, concurrency, mitigation payment and intersection standards
- Exhibit No. 15 Letter, dated February 8, 1996, from William G. Hoffman/King County Department of Transportation, to Julian Sayers/The Sayers Associates, Inc., with enclosed Certificate of Transportation Concurrency
- Exhibit No. 16 Technical data for parking lot lighting
- Exhibit No. 17 Letter, dated March 6, 1996, from Julian Sayers/The Sayers Associates, Inc., to David A. Rodgers, with enclosed anticipated outline of testimony for March 11, 1996 Big Finn Hill Park Phase IV hearing
- Exhibit No. 18 Letter, dated March 4, 1996, from Julian Sayers/ The Sayers Associates, Inc., to David A. Rodgers, with enclosed anticipated witness list for March 11, 1996 Big Finn Hill Park Phase IV hearing

The following exhibits were offered and entered into the record on March 12, 1996:

- Exhibit No. 19 Memo, dated March 7, 1996, from Mason Bowles/ Dept. of Development and Environmental Services, to Bruce Engell/Dept. of Development and Environmental Services, re: Big Finn Hill Park
- Exhibit No. 20 Letter, dated October 10, 1995, from King County Councilmembers Louise Miller and Maggi Fimia, to Big Finn Hill Park area residents, re: results of public meeting September 27, 1995 concerning Big Finn Hill Park
- Exhibit No. 21 Written summary of oral testimony presented on March 11, 1996, by David A. Rodgers
- Exhibit No. 22 Twenty-three photographs, identified by David A. Rodgers as having been taken by him, in February and March, 1996, of the Big Finn Hill Park area

RST:gb

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